

## REMARKS

Claims 1 through 33 are pending. Claims 13 through 22 and 24 through 33 are withdrawn from consideration as being directed to a non-elected invention. Claims 1 through 12 and 23 are rejected.

### 1. Claim Rejections Under 35 USC §112, 2<sup>nd</sup> Paragraph

Claims 1-12 and 23 are rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection, as hereinafter set forth.

Claims 1-12 and 23 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to recite a positive process step that refers back to the preamble of the claim. Claims 1 and 23 have been amended to contain the language “thereby detecting an interaction between the first and second test agent.” Accordingly, the indefiniteness rejection for claims 1-12 and 23 has been obviated in this regard. It is noted that this amendment merely clarifies the claim language and is not intended to include the preamble into a claim limitation.

Claims 1-12 and 23 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite for being unclear as to what constitutes a “substantially cell free environment.” Claims 1 and 23 have been amended by replacing “substantially cell free environment” with “in vitro.” Therefore, the indefiniteness rejection for claims 1-12 and 23 is no longer applicable and withdrawal of the rejection in this regard is requested.

Claim 12 stands rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for reciting “derivatives thereof” because it is unclear how close to the original the derivatives might be. Applicant amended claim 12 by removing the language “and derivatives thereof” and inserting “and.” As a result, the indefiniteness rejection for claim 12 has been obviated in this regard and Applicant requests withdrawal of the indefiniteness rejection for claim 12.

Claim 23 stands rejected for an informality. Claim 23 has been amended by replacing “capable interfering” with “capable of interfering” in the preamble.

Accordingly, the rejection for claim 23 is no longer applicable in this regard and withdrawal of the indefinites rejection is requested.

## **2. The Rejection Under Double Patenting**

Claim 23 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,551,786. Applicant has overcome this rejection by filing the attached Terminal Disclaimer in compliance with 37 CFR 1.321(c). Accordingly, Applicant requests that this rejection be withdrawn. It is noted that this Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting and does not acquiesce to the merits of the rejection.

## **CONCLUSION**

In view of the above amendments and remarks, all claims are now in condition for allowance. An early notice to this effect is respectfully requested. The Examiner is invited and encouraged to call the undersigned if it may expedite the prosecution of this application.

• Appl. No. 10/040,969  
• Amendment dated Oct. 7, 2004  
• Reply to Office Action of July 14, 2004

It is not believed that any time extension or fees are required with this response. If this is incorrect, an extension of time as deemed necessary is hereby requested, and the Commissioner is hereby authorized to charge any appropriate fees or deficiency or credit any over payment to Deposit Account no. 50-1627.

Respectfully submitted,



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